

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: APPLICATION OF ELECTRIC POWER BOARD OF CHATTANOOGA
FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO
PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES**

DOCKET NO. 97-07488

PRE-HEARING BRIEF OF NEXTLINK

I. Summary

NEXTLINK, Tennessee LLC ("NEXTLINK") opposes the application of the Electric Power Board of Chattanooga ("EPB") for a certificate to operate as a competitive local exchange carrier until EPB has complied with the statutory requirements described in T.C.A. § 7-52-402 and otherwise demonstrated how it will avoid cross-subsidizing its telephone services with revenues and resources from its electric operations

NEXTLINK has no opposition to competition from EPB as long as EPB can clearly establish that its telecommunications operations will not be subsidized directly or indirectly by the City of Chattanooga or by EPB's electric customers. NEXTLINK believes that the TRA must require EPB to make that showing before awarding EPB a CLEC certificate.

II. Discussion

When the TRA considers a CLEC application pursuant to T.C.A. § 65-4-201(c), the agency must consider whether the applicant "will adhere to all applicable commission policies, rules and orders "

The "policies" of the TRA must necessarily include the policies and statutes of the Tennessee legislature as expressed in the laws of the state.

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T.C A § 7-52-402, which authorizes EPB to file this application, specifically requires that a municipally owned electric utility like EPB “shall not provide subsidies” for its telecommunications services. Section 402(1) provides that EPB may “dedicate a reasonable portion” of its electric plant to the provision of telecommunications services “the costs of which shall be allocated to [telecommunications] services for regulatory purposes.” Other statutes require EPB to allocate to its telephone services amounts for pole attachments, rights-of-way fees, and other local taxes which a privately owned telephone company would pay. See T C A. § 7-52-405.

Compliance with these statutory requirements is not a simple process. As the TRA is well aware from its experience in other “costing” dockets, the allocation of costs and the subsequent determination of cost-based, non-subsidized rates is both time consuming and controversial. Nevertheless, the proper allocation of these costs is required by § 402 and essential to the determination that EPB does not have an unfair competitive advantage over carriers like NEXTLINK.

In its pre-filed testimony, EPB promises only that it has the capability of performing such allocations and that it will adopt the same cost codes used by the FCC. EPB has apparently not begun the difficult allocation process.

EPB contends that it should be granted a certificate now and that these allocation issues should be addressed when EPB proposes telephone rates. That, however, is not consistent with the TRA’s statutory obligation under T.C.A § 65-4-201(c). The TRA cannot approve EPB’s application until the applicant “*has demonstrated*” that EPB “*will adhere to*” the state’s policy against cross-subsidization as set forth in T.C A § 7-52-402 and the prohibition of “anti-competitive practices” described in Section 401.

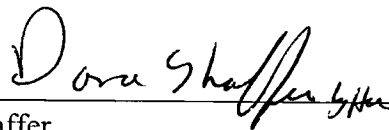
Clearly, EPB can make no such "demonstration" until EPB performs the cost allocations required by state law, and the TRA is satisfied that there is no reasonable danger of cross-subsidization

For example, EPB has informed the TRA staff that, although EPB will re-allocate a portion of its fiber optic network to EPB's telephone operations, EPB does not intend to reimburse the electric customers who have paid to build that network. Letter of December 9, 1997 from Ronald Fugatt to Scott Trout. EPB's position is plainly inconsistent with the statutory prohibitions against cross-subsidization and anti-competitive conduct. Based on that evidence alone, EPB cannot demonstrate that it will adhere to the requirements of Sections 401 and 402.

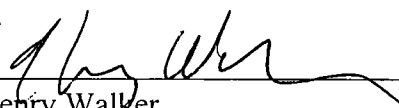
III. Conclusion

This is the first CLEC application filed by a municipal electric utility and the precedents set in this proceeding will determine how and whether other municipally owned electric utilities will enter the telecommunications field. It is important, therefore, that the TRA clearly establish its commitment to a level playing field among all competing CLECs. NEXTLINK therefore asks that the application be denied until EPB has demonstrated compliance with the provisions of Sections 401 through 407

Respectfully submitted,



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CERTIFICATE OF SERVICE

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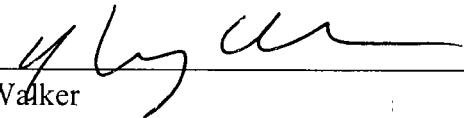
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